

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 63 – HB 228

March 19, 2013

**SUMMARY OF ORIGINAL BILL:** Requires the Department of Finance and Administration (the Department) to monitor, and cause to be audited by the Department's independent auditor, the pharmacy benefit manager's (PBM's) compliance with the provisions of any state pharmacy benefit contract. The Department is required to undergo an annual risk assessment to determine the contract areas that pose the greatest risk of noncompliance or of fraud, waste, and abuse. The Department is required to consult with the Office of the Comptroller of the Treasury (the Comptroller) in determining the scope and extent of monitoring and auditing plan procedures and to incorporate the results of the annual risk assessment into the monitoring and auditing plan. In addition to the results of the annual risk assessment, the Department is required to design the marketing plan to examine source documentation wherever possible and to include steps for analyzing and testing of specified eligibility, pricing, payment, and other industry related risks to reduce the risk of financial losses due to fraud, waste, and abuse. The Department is required to seek appropriate remedies for contract noncompliance or from occurrences of fraud, waste, or abuse discovered through monitoring or auditing. The Department is authorized to contract with a qualified independent auditor to conduct the auditing required by this legislation. The Commissioner of Finance and Administration is required to report annually, or as requested, on the PBM's compliance with the PBM's contract to the Speakers of the Senate and the House of Representatives and the Fiscal Review Committee.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - Exceeds \$286,200

Increase Local Expenditures - Exceeds \$25,300\*

**SUMMARY OF AMENDMENT (004818):** Deletes all language after the enacting clause. Requires the Department of Finance and Administration (the Department) to monitor, and cause to be audited by the Department's independent auditor, the pharmacy benefit manager's (PBM's) compliance with the provisions of any state pharmacy benefit management contract. The Department is required to undergo a single annual risk assessment after one year of entering into or renewing any state pharmacy benefits contract to determine the areas of the contracts that pose the greatest risk of noncompliance, fraud, waste, and abuse. The Department is required to update the risk assessment when contract amendments result in additional risks of

noncompliance, fraud, waste or abuse. The Department is required to consult with the Office of the Comptroller of the Treasury (the Comptroller) in determining the scope and extent of monitoring and auditing plan procedures and to incorporate the results of the annual risk assessment into the monitoring and auditing plan. The audit and monitoring plan must address all state pharmacy benefits management contracts and be designed to examine source documentation whenever source documentation is available. The plan must include a review of pricing, payment, and other industry related risks to reduce the risk of financial losses due to fraud, waste, and abuse including:

- For pharmacy benefit contracts entered into or renewed on or after July 1, 2013, reconciliation of the PBM's payments to pharmacies with the state's reimbursement to the PBM;
- Confirmation that the PBM's payments to pharmacies do not reflect disparity among network pharmacies attributable to preferential treatment of one or more pharmacies;
- Review of the state's claim utilization to ensure that per claim rebate guarantees were accurately calculated by the PBM;
- Review of rebate contracts between the PBM and five drug manufacturers, to be selected by the Benefits Administration Division of the Department and the contracted auditor to ensure that eligible rebate utilization was accurately invoiced on behalf of the state;
- Comparison of the total rebates collected by the PBM (pass-through rebates) to the minimum rebate guarantees (per claim rebates) to ensure that annual reconciliation of rebate payments to the state represented the greater of the two amounts; and
- Monitor the activities of the PBM to ensure that the contractor is conducting audits and other reviews of pharmacies as provided in the contractor's scope of services.

The Department is required to seek appropriate remedies for contract noncompliance and occurrences of fraud, waste, or abuse discovered through monitoring or audits. The Department is authorized to contract with a qualified independent auditor to conduct the audits required by this legislation. The Commissioner of Finance and Administration is required to report by July 1 of each year on the PBM's compliance with the PBM's contract to the Speaker of the Senate, the Speaker of the House of Representatives, and the Fiscal Review Committee. The Department may submit the updated audit and monitoring plan and any audit or monitoring findings to comply with this reporting requirement.

The bill expressly states that it applies to any state or local health insurance plan established under Title 8, Chapter 27.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

### **NOT SIGNIFICANT**


Assumptions for the bill as amended:

- The independent auditing services will be provided by an outside contractor.

- The Department is only required to audit and monitor the PBM's compliance relative to the Department's pharmacy benefit management contracts.
- According to the Department, the assessment, reporting, auditing, and monitoring requirements of the bill can be accommodated within the existing resources of the Department without an increased appropriation or reduced reversion.
- According to the Comptroller, any increase in expenditures required by assistance provided to the Department can be accommodated within existing resources without an increased appropriation or reduced reversion.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

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